U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALI MESCHI and U.S. POSTAL SERVICE,
POST OFFICE, City of Industry, Calif.

Docket No. 97-924; Submitted on the Record;
Issued December 11, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a loss of hearing in the performance of duty, causally related to factors of his federal employment.

On July 6, 1994 appellant, then a 39-year-old clerk, filed a claim alleging that he sustained a hearing loss in the performance of duty, causally related to factors of his federal employment. He alleged that he first became aware of his problem on May 11, 1994. Appellant has not been in pay status since April 5, 1991 and has not been on the employing establishment rolls since April 28, 1993.

Appellant began working for the employing establishment on April 6, 1981. He took a preemployment physical on April 6, 1981. Audiometric testing results from April 6, 1981 were noted in a November 21, 1995 report from an audiologist, Henry D. Schmitz, as showing the following decibel losses in hearing thresholds: 10, 15, 65, and 65 decibels at 500, 1,000, 2,000, and 3,000 cycles per second (Hz) respectively, for the right ear, and 5, 5, 55, and 60 decibels at the same frequencies, respectively, for the left ear. No explanation for these preemployment preexisting high frequency hearing losses was given.

A February 10, 1984 audiogram was reported as showing the following hearing thresholds: 10, 15, 65, and 65 decibels at 500, 1,000, 2,000, and 3,000 Hz for the right ear, and 5, 5, 55 and 60 decibels for the left ear. These levels were essentially unchanged from appellant's April 6, 1981 preemployment audiogram results.

On June 15, 1994 appellant alleged that he was exposed to letter sorting machine (LSM) noise, to flat sorting machine noise, and to the noise of belts, dumpers, and other equipment. Appellant denied that he had had a previous hearing problem or exposure to loud noises.

On November 22, 1994 the Office referred appellant to Dr. Richard G. Castanon, a Board-certified otolaryngologist, for further evaluation. By report dated December 22, 1994, Dr. Castanon diagnosed "bilateral high frequency sensorineural hearing loss - probably noise-induced," and included audiometric findings showing hearing thresholds in decibels at 500,

1,000, 2,000, and 3,000 Hz as 20, 25, 75 and 75 decibels respectively for the right ear and 15, 15, 70 and 70 decibels for the left ear.

The employing establishment also submitted noise survey sampling results demonstrating most of the readings as being between 52 and 70 decibels, with an occasional unsustained peak of 108.7 decibels.

By report dated August 7, 1995, Dr. Brian E. Schindler, an Office medical consultant, reviewed the noise exposure data provided from the employing establishment and concluded that appellant had not been exposed to injurious levels of noise in his employment. He also noted that audiograms dating back to 1984 showed a very significant bilateral high frequency hearing loss which had only slightly deteriorated over time, and he concluded that appellant had not established a causal relationship between his employment and his hearing loss.

By decision dated August 17, 1995, the Office rejected appellant's claim finding that causal relationship of appellant's hearing loss with factors of his federal employment had not been established. The Office noted that the Office medical adviser had found that appellant had not been exposed to hazardous levels of noise.

By letter dated November 27, 1995, appellant, through his representative, requested reconsideration and in support he submitted a statement to the effect that his military service did not expose him to gun fire. He also submitted the November 21, 1995 report from the audiologist, Mr. Schmitz, which included the April 6, 1981 audiometric results demonstrating a preemployment high frequency hearing loss.

By decision dated February 7, 1996, the Office denied appellant's request for reconsideration of the case on its merits finding that the evidence submitted in support was not sufficient to warrant a review of the case on its merits.

By letter dated April 18, 1996, appellant requested reconsideration and in support he submitted a statement from Dr. M. Darani, who was in the Army medical corps regarding appellant's military duties, and a March 27, 1996 statement from the audiologist, Mr. Schmitz.

In a May 8, 1996 memorandum of conference, the claims examiner noted that, upon seeking clarification regarding the employing establishment noise survey, he was told that appellant was exposed to noise well under the sustained threshold level for hazardous noise of 85 decibels, with levels above the threshold sustained only for about two to three seconds.

The claims examiner also consulted with the Office medical adviser and consultant in otolaryngology, Dr. Schindler, who opined that the noise levels appellant was exposed to, including the occasional spike to 108.7 decibels, would not cause hearing loss.

By decision dated May 28, 1996, the Office modified the prior decision to reflect that appellant's claim was being denied for failure to establish fact of injury. The Office found that appellant was not exposed to hazardous noise in his employment sufficient to cause noise-induced hearing loss.

By letter dated September 23, 1996, appellant again requested reconsideration and in support he submitted further reports from Mr. Schmitz, the audiologist, and a statement from a

union president. Appellant alleged that he was exposed to continuous noises, impact noises, and continuous impact noises.

By decision dated December 9, 1996, the Office denied modification of the prior decision finding that the information submitted in support of the request was insufficient to warrant modification. The Office found that the evidence submitted did not constitute probative evidence that appellant had been exposed to hazardous noise.

The Board finds that appellant has failed to establish that he sustained loss of hearing in the performance of duty, causally related to factors of his federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[1] (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[2] and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[3] The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,[4] must be one of reasonable medical certainty,[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6] In the instant case appellant has failed to establish as existing the factors of employment he alleged as causing his hearing loss condition, and has failed to submit rationalized medical evidence supporting that his condition was the result of the alleged factors.

In this case, appellant has failed to establish that he was exposed to hazardous levels of noise in the course of his federal employment. The weight of the evidence with regard to appellant's exposures is constituted by the employing establishment noise surveys which demonstrate that appellant was not exposed to sustained decibel levels in excess of 85 decibels, but was instead exposed to levels ranging from 52 to 70 decibels, with only an occasional spike of up to 108.7 decibels. This exposure is not accepted as being hazardous in accordance with the Federal (FECA) Procedure Manual, and appellant has not submitted additional factual evidence

[1] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[2] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

[3] *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

to support that he was exposed to any greater levels of noise that the survey results demonstrated. Consequently, he has failed to factually establish his claim.

The probative medical evidence of record is represented by the reports of Dr. Schindler which state that this documented level of exposure was insufficient to cause appellant's hearing loss. Appellant submitted the reports of Mr. Schmitz, an audiologist, in support of his claim of occupationally-related hearing loss, but the Board notes that these reports do not constitute probative medical evidence under the Federal Employees' Compensation Act as an audiologist is not considered to be a physician under the Act. Section 5 U.S.C. § 8101(2) defines "physician" as including "surgeons, podiatrists, dentists, clinical physhologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." The Board notes that this definition omits any mention of audiologists, and consequently, Mr. Schmitz's reports do not constitute probative medical evidence in this case, and no further probative medical evidence supporting his claim has been submitted by appellant.

Further, the Board notes that the evidence of record demonstrates that appellant had a significant high frequency hearing loss prior to his employment with the employing establishment, as demonstrated by the audiometric results from 1981 reported by Mr. Schmitz. As the hearing loss demonstrated in appellant's later audiograms and in his 1994 post-employment audiogram vary only slightly from his preemployment test results, the Board further concurs with Dr. Schindler's opinion that any hearing loss appellant manifested in 1994 preexisted his employment and is unrelated to factors of his federal employment.

Consequently, appellant has failed to present sufficient factual or medical evidence to establish his claim that he sustained an occupational hearing loss in the course of his federal employment.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated December 9, July 2, May 28 and February 7, 1996 are hereby affirmed.

Dated, Washington, D.C.
December 11, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member